

§ 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(3):

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(3).

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines in either of the following two circumstances:

(1) The country at the foreign end of the private line appears on the Commission's list of international routes exempted from the international settlements policy set forth in § 64.1002 of this chapter; or

(2) The carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the private line. A foreign carrier lacks market power for purposes of this section if it

does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points.

NOTE TO PARAGRAPH (d): The Commission's list of international routes exempted from the international settlements policy, and the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points are available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21 of this part.

[64 FR 19066, Apr. 19, 1999, as amended at 64 FR 34741, June 29, 1999; 67 FR 45391, July 9, 2002; 69 FR 23154, Apr. 28, 2004]

§ 63.24 Assignments and transfers of control.

(a) *General.* Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) *Assignments.* For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(c) *Transfers of control.* For purposes of this section, a transfer of control is

a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in the Note to this paragraph (c).

NOTE TO PARAGRAPH(c): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

(d) *Pro forma assignments and transfers of control.* Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or pro forma. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d). The types of transactions listed in Note 2 to this paragraph (d) shall be considered presumptively pro forma and prior approval from the Commission need not be sought.

NOTE 1 TO PARAGRAPH(d): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; au-

thority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

NOTE 2 TO PARAGRAPH(d): If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or Assignment of less than a controlling interest in a partnership.

(e) *Applications for substantial transactions.* (1) In the case of an assignment or transfer of control shall of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include the information requested in paragraphs (a) through (d) of §63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of §63.18 is required only for the transferee/assignee. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

(3) The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee shall notify the Commission no later than 30

days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification may be made by letter (sending an original and five copies to the Office of the Secretary) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) *Notifications for non-substantial or pro forma transactions.* (1) In the case of a pro forma assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A pro forma assignee or carrier that is subject to a pro forma transfer of control shall file a notification with the Commission no later than 30 days after the assignment or transfer is completed. The notification may be made by letter (sending an original and five copies to the Office of the Secretary). The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee;

(ii) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, does not result in a change in the actual controlling party.

(3) A single letter may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(4) Upon release of a public notice granting a pro forma assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under this paragraph (f).

(g) *Involuntary assignments or transfers of control.* In the case of an involuntary assignment or transfer of control to: a bankruptcy trustee appointed under involuntary bankruptcy; an independent

receiver appointed by a court of competent jurisdiction in a foreclosure action; or, in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

[67 FR 45391, July 9, 2002]

§ 63.25 Special provisions relating to temporary or emergency service by international carriers.

(a) For the purpose of this section the following definitions shall apply:

(1) *Temporary service* shall mean service for a period not exceeding 6 months;

(2) *Emergency service* shall mean service for which there is an immediate need occasioned by conditions unforeseen by, and beyond the control of, the carrier.

(b) Requests for immediate authority for temporary service or for emergency service may be made electronically on the Internet through the International Bureau Filing System (IBFS), by letter, or by telegram setting forth why such immediate authority is required, the nature of the emergency, the type of facilities proposed to be used, the route kilometers thereof, the terminal communities to be served, and airline kilometers between such communities; how these points are presently being served by the applicant or other carriers, the need for the proposed service, the cost involved including any rentals, the date on which the service is to begin, and where known, the date or approximate date on which the service is to terminate. For information on filing your request through IBFS, see part 1, subpart Y and § 63.20 of this chapter, and the IBFS homepage at <http://www.fcc.gov/ibfs>.

(c) Without regard to the other requirements of this part, and by application setting forth the need therefor, any carrier may request continuing authority, subject to termination by the Commission at any time upon 10 days' notice to the carrier, to provide temporary or emergency service by the